

EXHIBIT 23

VOLUME 5

Pages 1053 - 1318

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable YVONNE GONZALEZ ROGERS, Judge

EPIC GAMES, INC.,)	
)	
Plaintiff,)	NO. C-20-5640 YGR
)	
vs.)	Friday, May 7, 2021
)	
APPLE, INC.,)	Oakland, California
)	
Defendant.)	BENCH TRIAL
<hr/>		
APPLE, INC.,)	
)	
Counterclaimant,)	
vs.)	
)	
EPIC GAMES, Inc.,)	
)	
Counter-Defendant.)	
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REPORTER'S TRANSCRIPT OF PROCEEDINGS

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Official Court Reporter

TRANSCRIPT PRODUCED BY COMPUTER-AIDED TRANSCRIPTION

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1 Q. You're aware of that?

2 A. I am.

3 Q. And you're aware that Itch.io is a third-party app store?

4 A. I am.

5 Q. And the Court has also heard that Itch.io was added

6 without reviewing all the games. You're aware of that?

7 A. Yes.

8 Q. And are you aware, sir, that Itch.io includes so-called

9 adult games such as a game called *Sisterly Lust*? Are you

10 aware of that?

11 A. I am not.

12 Q. And you may not be aware, then, that the description of

13 that game includes a list of fetishes which include many words

14 that are not appropriate for us to speak in federal court.

15 A. Okay.

16 Q. Are you aware that?

17 A. I am not.

18 Q. And the list goes on. There are many games on Itch.io. I

19 won't even read the names out loud.

20 A. Okay.

21 Q. But they are both offensive and sexualized. You're not

22 aware of that?

23 A. Itch.io is an app store that is not the Epic Games Store.

24 We are not distributing -- Itch is distributing Itch.io's

25 games. Epic is only distributing the app store Itch.io.

1 **Q.** And Itch.io is now available as an app on the Epic Games
2 Store; correct?

3 **A.** Correct.

4 **Q.** And those apps in Itch.io have not gone through any review
5 process whatsoever; correct?

6 **A.** They are subject to whatever process Itch.io puts in front
7 of their developers.

8 **Q.** Right. So Epic Games, your store, is on the hook for
9 whatever process Itch.io put in place to review these games
10 that are so offensive we cannot speak about them here;
11 correct?

12 **A.** I disagree with that statement.

13 **THE COURT:** Okay. So can you or can you not access
14 those apps through your app store?

15 **THE WITNESS:** You cannot access those apps through
16 the Epic Games Store, no. You can access those apps through
17 their application which that is what we are -- we are
18 downloading Itch.io, which is an app store. You have to have
19 your own account with you them and you use their store and you
20 are subject to their end user agreement.

21 **THE COURT:** So if I have a phone and your app store
22 was on that phone, you would -- that other store could be
23 downloaded which has all of this offensive material?

24 **THE WITNESS:** Not on your phone. It could be -- the
25 app could be downloaded onto your PC and you could access

CERTIFICATE OF REPORTERS

We, Diane E. Skillman and Pamela Hebel, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter. We further certify that we are neither counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken, and further that we are not financially nor otherwise interested in the outcome of the action.

_____/S/DIANE E. SKILLMAN_____

Diane E. Skillman, CSR, RPR, FCRR

_____/S/ PAMELA HEBEL_____

Pamela Hebel, CSR, RMR, FCRR

SUNDAY, MAY 9, 2021